

**UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: MICHAEL J. HORGAN; TIM ALLEN; MICHAEL GARDNER; TERRI  
McGILL  
Serial No.: 08/908,994  
Filed: AUGUST 8, 1997  
Title: METHOD AND APPARATUS FOR SECURE COMMUNICATIONS  
Group:  
Examiner:  
Docket No.: 36212.00006 (SYN5397.01A)

**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22213-1450**

**PETITION TO ACCEPT DECLARATION FROM JOINT INVENTORS SIGNING ON  
BEHALF OF AN INVENTOR WHO CANNOT BE REACHED  
37 CFR 1.47(a)**

Dear Sir:

The Applicants hereby petition under 37 CFR 1.47(a) for acceptance of the enclosed declaration signed on behalf of inventor MICHAEL GARDNER, who is a nonsigning inventor, by all of the other joint inventors. Diligent efforts have been made to contact inventor MICHAEL GARDNER but he cannot be reached.

This petition is made on the basis of the following facts that are relied upon to establish the diligent effort made to secure the execution of the declaration by the nonsigning inventor for the above-identified patent application. Furthermore, this petition is signed by the available person having first-hand knowledge of the facts recited therein.

**1. Identification Of Person Making This Statement Of Facts**

John P. O'Banion  
O'BANION & RITCHEY LLP  
400 Capitol Mall, Suite 1550  
Sacramento, CA 95814  
(916) 498-1010

## **2. Last Known Address Of The Nonsigning Inventor**

Full name of first joint nonsigning inventor:	MICHAEL GARDNER
Country of Citizenship of nonsigning inventor:	UNITED STATES
Last known address of nonsigning inventor:	HALE WEAL INDUSTRIES BUILDING 22-28 TAI CHUNG ROAD, 6/F TSUEN WAN, NT, HONG KONG

## **3. Details Of Efforts To Reach Nonsigning Inventor**

On May 30, 2003, I caused a copy of the patent application and Combined Declaration and Power of Attorney to be sent to Michael Gardner at the last known address listed above via United States Postal Service Global Express Mail, Number EC 100 413 089 US, so that Mr. Gardner could sign the Combined Declaration and Power of Attorney for this application. A copy the transmittal letter is attached as Exhibit A and a copy of the airbill is attached as Exhibit B.

Delivery was attempted in Hong Kong on June 3, 2003. On June 24, 2003, the documents were returned to my office in Sacramento, CA as undeliverable for the reason that Mr. Gardner moved and the new address was unknown. A copy of the Return Notice is attached as Exhibit C, and a copy of the tracking information is attached as Exhibit D.

Since that time, I have instructed my staff to make diligent efforts to locate an address for Michael Gardner through an Internet search, which has proven unsuccessful due to the common usage of the surname and the given name. In addition, each of the joint inventors has been requested to provide any current knowledge of the whereabouts of Michael Gardner. As shown in Exhibits E, F, and G, none of the joint inventors have any knowledge of the current whereabouts of Michael Gardner.

Therefore, MICHAEL GARDNER is an inventor cannot be reached to sign a declaration in connection with this application after making diligent efforts. Accordingly, the Applicants herein respectfully request that this petition be granted.

A Combined Declaration and Power of Attorney is enclosed signed by joint inventors Michael J. Horgan, Tim Allen and Terri McGill. That document also includes added pages where the above-named joined inventors have signed on behalf of Michael Gardner.

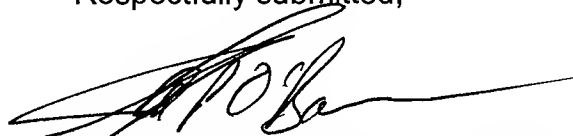
Enclosed please find check in the amount of \$130.00 petition fee, under 37 CFR § 1.17(h).

Please charge any fee deficiency to Deposit Account No. 07-1137.

Date: \_\_\_\_\_

10/6/03

Respectfully submitted,



John P. O'Banion, Reg. No. 33,201  
O'BANION & RITCHEY LLP  
400 Capitol Mall, Suite 1550  
Sacramento, CA 95814  
(916) 498-1010

**O'BANION & RITCHEY<sup>LLP</sup>**  
INTELLECTUAL PROPERTY ATTORNEYS

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400 Capitol Mall, Suite 1550  
Sacramento, California 95814  
Tel. (916) 498-1010  
Fax (916) 498-1074

John P. O'Banion  
Patent Attorney

E-Mail  
jpo@intellectual.com  
---  
Internet  
www.intellectual.com

May 30, 2003

Mr. Michael J. Horgan  
SYNECTIC DESIGN LLC  
5037 Buffwood Way  
Sacramento, CA 95841

Re: U.S. Patent Application  
METHOD AND APPARATUS FOR SECURE COMMUNICATIONS  
Inventors: Michael J. Horgan; Tim Allen; Michael Gardiner; Terri McGill  
Ser. No.: 08/908,994  
Filed: August 8, 1997  
Our File: SYN5397.01A

Dear Mike:

**URGENT - TIME SENSITIVE TRANSMITTAL**

I am enclosing the following documents for you and your co-inventors to sign in connection with this patent application:

1. Combined Declaration and Power of Attorney;

Please note that the Combined Declaration and Power of Attorney requires you to certify that you have read the application, and that you believe that you are an inventor of the subject matter of the application and what is claimed. *Even if you have already reviewed and approved the application, please read the enclosed patent application completely prior to signing these documents.*

Also, if you discover any errors of a minor or typographical nature in the application, the correction of which would be obvious, inherent or implied from the remainder of the application, please bring them to my attention. I can then file a Preliminary Amendment to the application to make the necessary changes. Please note, however, that we are not able to add new matter to the application.

May 30, 2003

Page 2

As a reminder, please provide us with copies of prior patents, publications and other information which the inventors, licensee and/or assignee consider to be related to this invention within one-month so that we can submit an Information Disclosure Statement. This is very important as described below.

The USPTO has imposed a strict duty of candor on the inventor, on each attorney preparing or prosecuting a patent application, and on every other individual who is involved in the preparation or prosecution of the application. This duty requires disclosure to the USPTO of all prior art information of which they are or become aware that is material to the examination of the application; *i.e.*, where it would be material to a Patent Examiner in deciding whether to allow a claim pending in the application. ***The courts are enforcing this duty against patent owners, when such information is not disclosed, by ruling that their patents are not enforceable, even where their patent is otherwise valid and infringed.*** Please note that the duty of disclosure under U.S. law extends to published information from anywhere in the world.

So that we may meet this obligation of full disclosure, please list, describe, or otherwise identify any additional prior art of which you are aware. Note that you are not required to make a search for prior art, merely to disclose art of which you are aware. If such prior art is in written form, please attach a copy of same if possible. Also, please bear in mind that this obligation is *continuous*; if pertinent prior art or knowledge should come to your attention at some future time, you should immediately call it to our attention.

Thank you again for your assistance with the prosecution of this application, and please let me know if you have any questions.

Best regards.

Sincerely,

O'BANION & RITCHEY LLP



John P. O'Banion

Enclosure

cc: Tim Allen (via certified mail)  
Michael Gardiner (via global express mail)  
Terri McGill (via certified mail)



UNITED STATES POSTAL SERVICE ®

**U.S. POSTAGE  
REQUIRED**

<b>FROM:</b> JERRY V KING O'BANION & RITCHEY LLP 400 CAPITOL MALL STE 1550 O'BANION & RITCHEY LLP SACRAMENTO CA 95814-4498 USA		<b>SENDER'S INSTRUCTION</b> If Undeliverable Return To: <input checked="" type="checkbox"/> Sender		
<b>TO:</b> MICHAEL GARDINER Attn: ACL HOLDINGS LTD. HALE WEAL IND. BLDG. 22-28 TAI CHUNG ROAD, 6/F TSUEN WAN, NT HONG KONG HONG KONG				
<b>CUSTOMS DECLARATION</b>		<b>WEIGHT</b>	0 LBS	2 OZS
No	Qty	Itemized Contents	Value (USD)	Country of Origin
1	1	BUSINESS CORRESPONDENCE	1.00	US
I certify that the particulars given are correct and that this item does not contain any dangerous article prohibited by postal regulations.			<b>Total Value (USD)</b>	1.00
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Online Shipping Label



EC 100 413 089 US

EXHIBIT B

Use only when using a FedEx Ship or InterNetShip document  
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UNITED STATES POSTAL SERVICE ®



KH 520 128 160 IE

**POSTAGE  
 REQUIRED**

**FROM:** JERRY V KING  
 O'BANION & RITCHEY LLP  
 100 CAPITOL MALL STE 1550  
 O'BANION & RITCHEY LLP  
 SACRAMENTO CA 95814-4498  
 USA

**SENDER'S INSTRUCTION**  
 If Undeliverable Return To:

☒ **Sender**

**TO:** MICHAEL GARDINER  
 Attn: ACL HOLDINGS LTD.  
 HALE WEAL IND. BLDG  
 122 TAI CHUNG ROAD, 6/F  
 TSUEN WAN, NT  
 HONG KONG  
 HONG KONG

**CUSTOMS DECLARATION**

No	Qty	Itemized Contents	Value (USD)
1	1	BUSINESS CORRESPONDENCE	1.00

I certify that the particulars given are correct and that this item does not contain any dangerous article prohibited by postal regulations.

**Total Value (USD)**

1.00

Signature of Sender:

Date:

05/20/03

**RETURN 退回 CN15**  
**RETOUR (old C33/CP10)**

☐ Addressee unknown 查無此人 ☐ Refused 拒收  
 Destinataire inconnu Refusé

☐ Not occupied ☐ Unclaimed 不到收  
 Inhabité 無人居住 Non réclamé

☒ Moved, new address unknown 搬遷  
 Parti sans laisser d'adresse 新地址不詳

☐ Insufficient address 地址不全  
 Adresse Insuffisante

☐ No such address 無此地址  
 Adresse inexistante

☐ Moved, redirection service not arranged by addressee  
 Parti sans arrangement à faire suivre  
 搬遷, 收件人並無安排轉遞服務  
 Pos 585 (7/99)



EC 100 413 089 US

ation, and required customs  
 ation form.

pour tout renseignement concernant  
 les destinations étrangères, les tarifs  
 internationaux et le formulaire nécessaire  
 de déclaration

tarifas internacionales, y el formulario de



## Track & Confirm

### Shipment Details

You entered EC10 0413 089U S

We attempted to deliver your item at 11:24 am on June 24, 2003 in SACRAMENTO, CA 95814 and a notice was left. A second delivery attempt will be made. If unsuccessful, we will hold it for five business days and then it will be returned to the sender. No further information is available for this item.

Here is what happened earlier:

- ARRIVAL AT UNIT, June 24, 2003, 5:43 am, SACRAMENTO, CA 95813
- INBOUND INTO CUSTOMS
- INBOUND INTERNATIONAL ARRIVAL, SAN FRANCISCO AMC, June 23, 2003, 10:36 am
- AT FOREIGN DELIVERY UNIT, HONG KONG, June 21, 2003, 6:08 pm
- ATTEMPTED DELIVERY ABROAD, HONG KONG, June 03, 2003, 11:00 am
- AT FOREIGN DELIVERY UNIT, HONG KONG, June 03, 2003, 7:46 am
- ARRIVED ABROAD, HONG KONG, June 02, 2003, 11:51 pm
- INTERNATIONAL DISPATCH, SAN FRANCISCO AMC, May 31, 2003, 5:24 am
- ENROUTE, May 30, 2003, 6:41 pm, WEST SACRAMENTO, CA 95799
- ACCEPTANCE, May 30, 2003, 5:50 pm, WEST SACRAMENTO, CA 95798

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▶ Request Proof of Delivery

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EXHIBIT D



Applicant: MICHAEL J. HORGAN; TIM ALLEN; MICHAEL GARDNER; TERRI MCGILL  
Serial No.: 08/908,994  
Filed: AUGUST 8, 1997  
Title: METHOD AND APPARATUS FOR SECURE COMMUNICATIONS  
Group:  
Examiner:  
Docket No.: 36212.00006 (SYN5397.01A)

**STATEMENT BY INVENTOR REGARDING KNOWLEDGE  
OF WHEREABOUTS OF JOINT INVENTOR**

---

I am an above named joint inventor, and have signed a Combined Declaration and Power of Attorney on my own behalf and on behalf of the following nonsigning joint inventor:

Full name of first joint nonsigning inventor:	MICHAEL GARDNER
Country of Citizenship of nonsigning inventor:	UNITED STATES
Last known address of nonsigning inventor:	HALE WEAL INDUSTRIES BUILDING 22-28 TAI CHUNG ROAD, 6/F TSUEN WAN, NT, HONG KONG

X I have no knowledge of the whereabouts of Michael Gardner other than the above address.

\_\_\_\_\_ I believe that Michael Gardner can be reached at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
MICHAEL J. HORGAN

Dated: 9-26-03

\_\_\_\_\_  
TIM ALLEN

Dated: \_\_\_\_\_

\_\_\_\_\_  
TERRI MCGILL

Dated: \_\_\_\_\_

**EXHIBIT E**

Applicant: MICHAEL J. HORGAN; TIM ALLEN; MICHAEL GARDNER; TERRI McGILL  
Serial No.: 08/908,994  
Filed: AUGUST 8, 1997  
Title: METHOD AND APPARATUS FOR SECURE COMMUNICATIONS  
Group:  
Examiner:  
Docket No.: 36212.00006 (SYN5397.01A)

**STATEMENT BY INVENTOR REGARDING KNOWLEDGE  
OF WHEREABOUTS OF JOINT INVENTOR**

I am an above named joint inventor, and have signed a Combined Declaration and Power of Attorney on my own behalf and on behalf of the following nonsigning joint inventor:

Full name of first joint nonsigning inventor:	MICHAEL GARDNER
Country of Citizenship of nonsigning inventor:	UNITED STATES
Last known address of nonsigning inventor:	HALE WEAL INDUSTRIES BUILDING 22-28 TAI CHUNG ROAD, 6/F TSUEN WAN, NT, HONG KONG

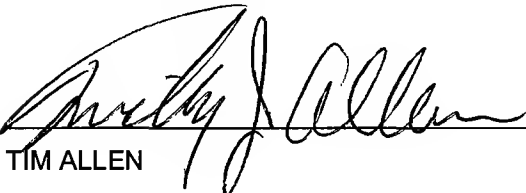
X I have no knowledge of the whereabouts of Michael Gardner other than the above address.

\_\_\_\_\_ I believe that Michael Gardner can be reached at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
MICHAEL J. HORGAN

Dated: \_\_\_\_\_

  
TIM ALLEN

Dated: 9/22/03

\_\_\_\_\_  
TERRI McGILL

Dated: \_\_\_\_\_

**EXHIBIT F**

Applicant: MICHAEL J. HORGAN; TIM ALLEN; MICHAEL GARDNER; TERRI MCGILL  
Serial No.: 08/908,994  
Filed: AUGUST 8, 1997  
Title: METHOD AND APPARATUS FOR SECURE COMMUNICATIONS  
Group:  
Examiner:  
Docket No.: 36212.00006 (SYN5397.01A)

**STATEMENT BY INVENTOR REGARDING KNOWLEDGE  
OF WHEREABOUTS OF JOINT INVENTOR**

---

I am an above named joint inventor, and have signed a Combined Declaration and Power of Attorney on my own behalf and on behalf of the following nonsigning joint inventor:

Full name of first joint nonsigning inventor:	MICHAEL GARDNER
Country of Citizenship of nonsigning inventor:	UNITED STATES
Last known address of nonsigning inventor:	HALE WEAL INDUSTRIES BUILDING 22-28 TAI CHUNG ROAD, 6/F TSUEN WAN, NT, HONG KONG

☒ I have no knowledge of the whereabouts of Michael Gardner other than the above address.

☐ I believe that Michael Gardner can be reached at the following address:


\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
MICHAEL J. HORGAN

Dated: \_\_\_\_\_

\_\_\_\_\_  
TIM ALLEN

Dated: \_\_\_\_\_

  
TERRI MCGILL

Dated: Oct 15, 2003

EXHIBIT G